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Chair

Mr. Robert Oliphant

Standing Committee on Public Safety and National Security

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● (1625)

[*English*]

The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)): I call this meeting to order. This is the 65th meeting of the Standing Committee on Public Safety and National Security.

[*Translation*]

Welcome, everyone.

[*English*]

Mr. Clement said to start without him, and we do have quorum so we will do that.

We thank our witnesses. All of you, we're going to change our meeting around a bit at committee. We have five presentations, and we're going to go through all the presentations, then we may get a couple of questions in, or we may not. We'll just see how we're doing with voting. If we have questions we want to ask, we'll either figure out whether we do a teleconference at some point or whether we put our questions in and send them to the witnesses.

Just before we begin, I want to draw the attention of committee members to the request for a project budget.

Welcome, Mr. Jowhari. I'm sorry I didn't see you at first. I knew you'd be here.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you. It's great to be here.

The Chair: It is. We say that every Monday and Wednesday.

Some hon. members: Oh, oh!

The Chair: I just want to draw your attention to the request for the project budget. This is the project budget related to this study, the budget for Bill C-23.

I've asked the clerk and he says it's pro forma, the usual amount for a study of a piece of legislation similar to this. It's in the total amount of $21,300 for our study. We'd like to be able to pay the witnesses' expenses by having a motion. Could I have a motion to approve the project budget for the study of Bill C-23?

Ms. Pam Damoff (Oakville North—Burlington, Lib.): I so move.

(Motion agreed to)

The Chair: For our guests today, because of various travel arrangements, we're going to start with Mr. Greene from the Canadian Bar Association, and then Mr. Wilson and Mr. Cabral from PortsToronto. The third one, just so you know, will be Mr. Peerbhoy and Ms. Jafari, and then Ms. Bell, and then Monsieur Fortin. We'll remind you when we get there.

We'll begin with Mr. Greene, and thank you for coming.

Mr. Michael Greene (Honourary Executive Member, Immigration Law Section, Canadian Bar Association): Thank you.

Good afternoon, Mr. Chair and members of the committee. My name is Michael Greene. I'm a former national chair of the immigration law section of the Canadian Bar Association. I'm currently a senior adviser. I've been practising immigration law for 30 years, and I also teach immigration law at the faculty of law, University of Calgary.

In 1999, I appeared before the predecessor of this committee on the current Preclearance Act, so I'm familiar with the process and what's evolved with the legislation.

I thank you for the invitation to present the CBA's immigration law, criminal justice, and commodity tax sections' views on the implications of Bill C-23. We're an association of 36,000 lawyers, law students, notaries, and academics. An important part of the Canadian Bar Association's mandate is seeking improvements in the law and the administration of justice. It's that perspective that brings us to appear before you today.

We have submitted a written brief to this committee. Today I will just focus on parts of that and what we consider probably the most serious concerns. It would be wonderful to be here for questions, but I will be running out for an airplane somewhere around 5:30. I don't know how long you will be going anyway. I'd love to answer questions, but we'll see how it goes.

At the outset, we'd like to make it clear that the CBA supports the concept of pre-clearance areas and the need to modernize the legislation to allow for expansion to land, sea, and rail crossings, and to permit Canadian pre-clearance areas in the United States. We recognize that the pre-clearance areas do offer a convenience and help to facilitate the free flow of goods and people across our mutual border.

However, we believe that the proposed bill goes too far in granting unnecessary and what we believe are unjustifiable powers to foreign officers operating on Canadian soil, and to Canadian officers operating on foreign soil, and I'll get into that.

We recognize that the government is in a difficult position. The agreement that this legislation is based on was signed in March 2015, and the U.S. has already enacted their legislation. It is difficult for us to go back and renegotiate the bill. At the same time, we know there's a lot of pressure on Parliament to hold their noses and pass the thing rather than risk getting a worse bill if it were renegotiated. We get that. We try to make recommendations with that in mind, but at the same time there are some serious concerns.

We were concerned when the bill first came out a year ago. Those concerns were greatly magnified with the outcome of the U.S. presidential election and how things could work in operation, given some of the pronouncements that were made during the election campaign. We understand that members of this committee have met with Secretary Kelly, and also that he has made some statements before his own committees that suggest he is warm and friendly to Canada. That's encouraging, but it doesn't take away some of the concerns we have, because they depend on the legislation and not the man.

The new U.S. administration is very inward looking. It is preoccupied with security. The changes they're proposing in the U.S. are to greatly enhance the security features of the U.S., to give greater enforcement powers, to increase the number of officers, but also with very little concern for individual rights or freedoms, with the sole exception, of course, of the right to bear arms.

It's in that context that we must remember that the bill will grant significantly enhanced powers to U.S. officers who owe their allegiance to a foreign government and not to Canada. These officers are trained in the United States, they report exclusively to U.S. authorities, and have a primary mandate to carry out the U.S. government's directions to identify and exclude potential threats to U.S. security. They also seem to have a more aggressive style than their Canadian counterparts, and we expect that this will only get worse as a top-down cultural change occurs within the Department of Homeland Security. We've seen it happen in Canada before with the CBSA, so we know that kind of cultural shift can happen, and it can be very hard to reverse.

Given the setting, we are not confident that a few hours' training by CBSA will be enough to instill respect for Canadian cultural values and constitutional rights in our pre-clearance areas. That is why we think it's very critical that we get the legislation right.

● (1630)

The main thing I want to talk about is the right to withdraw, but it's more than just the right to withdraw. It's the whole nature of the process. Under the current Preclearance Act, a traveller has an unqualified right to withdraw at any time in the process. It's entirely voluntary. It recognizes it's Canadian soil. We had this battle in 1999, and I think it was resolved and it was clarified, and the 1999 bill makes it very clear that Canadian law applies and a traveller can withdraw at any time. It uses language such as, “If the traveller chooses to answer any question...the traveller must answer truthfully. If the traveller refuses to answer any question asked”, they may be asked to withdraw. It is entirely voluntary. At any time you can say you don't want to do this anymore.

The proposed provisions of Bill C-23 would gut that legislation and change the pre-clearance process to one where foreign officers can compel answers to questions and can detain anyone who refuses to provide answers or information. It's not a minor change. It's a fundamental shift in the nature of the pre-clearance process. We believe it represents a significant surrender of Canadian sovereignty, which has been proposed without meaningful justification. The combined effect of clauses 31 and 32 effectively turns the U.S. pre-clearance areas into U.S. territory. The problem is not that they are applying U.S. laws, because it's quite clear they're applying Canadian laws. It's that they are applying a Canadian law—that is, Bill C-23—which we think gives them too much power.

With respect to a traveller who now wishes to withdraw, the only limit contained in here is that in subclause 32(3), which says, “A preclearance officer may exercise the powers set out in subsection (2) only to the extent that doing so would not unreasonably delay the traveller’s withdrawal”.

In his committee appearance a week ago, the minister assured the committee that the “unreasonable” test would be sufficient, because it's quite common to use reasonableness in Canadian law. However, we don't believe it's sufficient protection. First of all, “reasonable” is not a scientific term. It does not have a black and white definition. It's very open to contextual interpretation. The courts struggle with it on a daily basis. A problem here, unlike with criminal law, is that there's very little opportunity for these matters to come before the courts. The act specifically says that you cannot take a decision to Federal Court, and you're very limited in criminal and civil remedies. There are virtually none. The only way it could be tested is if a person is charged with obstructing or refusing to answer, and they defend that charge on the grounds that an unreasonable delay occurred.

We don't believe there are going to be a lot of charges under this bill. We think it will create a framework to create a process that is coercive and intimidating. That's going to be the real problem, the experience that travellers will have. We don't think we're going to see courts interpret what's reasonable.

The other thing to remember in terms of reasonableness is the mandate is different. Our reasons for wanting pre-clearance legislation are not the same as the Americans' reasons. We want it to facilitate the free flow of goods and people. The Americans want it to expand the border outwards so they can stop bad guys before they get onto American soil. It's a totally different motivation. When we consider something is reasonable or unreasonable, we don't want an unreasonable delay because we don't want to interfere with that free flow. They want to protect American security. That's their number one mandate. When they interpret an unreasonable delay, and they're trying to protect American security, you can expect they're going to want to ask more questions than a Canadian officer would.

If a U.S. officer, for instance, suspects somebody is border probing, which is the supposed rationale for these provisions, they're not just going to want to accept the person's explanation that they want to leave the area because they think they left their iron plugged in. They're going to want to get deeper into it. A border prober is not going to give you the honest answer when you first ask; that's going to demand further examination.

Under the new administration in the United States, we've already seen media reports of Muslim Canadians being subjected to hours and hours of questioning about their religious beliefs, their religious practices, their associations, and their opinions of the new U.S. president. I think you've had this brought to your attention already.

● (1635)

To illustrate how this could unfold and the problem with the legislation, there is the interplay of clauses 31 and 32. I'll admit that we did not cover this very effectively in our brief. It's something that came to our attention after our brief, figuring out the interplay.

I want to ask you to imagine the scenario of a Canadian Muslim traveller going through a pre-clearance area and being subjected to extreme vetting—which we know is on the table now—about their religious practices, beliefs, and associations. Feeling abused, the traveller announces his intention to withdraw. The officer, who has not finished his interrogation, announces that he wants to explore the traveller's true reasons for withdrawing—perhaps suspecting he is a border prober. The officer believes the questioning is not unreasonable because of their security mandate. However, the traveller thinks it is unreasonable and after several questions says, “I'm not going to answer any more. I think this is an unreasonable delay. I want to leave.”

At that point, the officer announces that he has reasonable grounds to suspect that the traveller has committed an offence under an act of Parliament by not answering the questions truthfully. That brings in section 32, which gives the officer the right to detain the individual. Under the wording of section 32, the officer then is able to question the traveller, collect information from the traveller, and examine, search, and detain goods of the traveller. Goods have been interpreted by the courts and by the CBSA to include electronic devices.

So you can see this situation where the person says, “I don't want to answer any more of your questions.” We're not talking any longer about unreasonable delay, because that's off the table. The officer is now saying, “I have reasonable grounds to suspect that you've given me an untruthful answer. I don't really believe it's the unplugged iron. I think it has something to do with your associations.” At that point in time, there doesn't seem to be a limit on the questioning that can take place.

That is a major concern. There does not appear to be any recourse for that traveller. They risk getting charged. What we think is going to happen is that people are going to submit themselves to intense questioning just to not have a bad experience and not be kept out of the United States forever.

The rationale offered for this is the so-called fear of border probing. Border probing—I'd never heard this term before. What is it? In our opinion, after fair consideration, we think this is a solution in search of a problem. Border probing is apparently when somebody comes through an area, then tries to surreptitiously evade being questioned or identified by simply turning around and leaving. But that's not the way pre-clearance areas work. The very first thing that happens when you go into a pre-clearance area is that you give them your passport. They scan that passport, and they have you already. You're identified. You're not surreptitious. There's no surreptitious leaving.

Even if you could leave, what is it exactly that's being probed? Hundreds of thousands of travellers every year cross through those borders. The border probers aren't going to see anything more than you or I see when we go to the United States.

● (1640)

The Chair: I'm afraid I need to get you to wind up.

Mr. Michael Greene: I'm going to wind up and say that we don't think the rationale's there. We think there needs to be something seriously done to amend clauses 31 and 32 to make them more effective.

Clause 32, interestingly, is not really reflected in the agreement, so it can be amended. We like the suggestion of the Muslim Lawyers Association of changing.... We say to eliminate the questioning about their reasons for withdrawing altogether. If you're not going to eliminate it, change it to “obtaining or identifying the reason for withdrawing” so it's more—

The Chair: Thank you, Mr. Greene. I have to cut you off.

Mr. Michael Greene: Thank you.

The Chair: I'll just draw members' attention to the fact that the CBA does have a written submission, which you have already received in your inboxes. It has specific recommendations, as well as suggested amendments.

Thank you very much.

Going to PortsToronto and Billy Bishop Toronto City Airport, we have Mr. Wilson and Mr. Cabral.

Mr. Geoffrey Wilson (Chief Executive Officer, PortsToronto): Thank you, Mr. Chairman.

Thank you all, honourable members, for having us here today. It's a great honour to be here speaking on behalf of the many proud, diligent, and professional members of PortsToronto and the very successful Billy Bishop airport.

Thank you for this opportunity to present our perspective regarding Bill C-23 and the importance of pre-clearance to Canada's economy, connectivity, security, and global competitiveness.

My name is Geoffrey Wilson and I am the CEO of PortsToronto, the federal government business enterprise that owns and operates Billy Bishop Toronto City Airport as well as the Outer Harbour Marina and the marine terminal operations in the Port of Toronto. I am joined today by my colleague Gene Cabral, who is the executive vice-president of Billy Bishop airport and PortsToronto, which is the area of our business that we will focus on here today.

We believe PortsToronto is in a good position to speak about the expansion of the U.S. pre-clearance system in Canada, given that we have spent the last several years working with organizations on both sides of the border to bring an expanded program to our airport.

Billy Bishop airport has achieved overwhelming success in the last decade. Growing from a facility that serviced just 25,000 passengers per year in 2006, Billy Bishop airport welcomed 2.7 million passengers in 2016. The airport generates more than $2.1 billion in economic impact per year and has created 6,500 jobs, 1,900 of which are at the airport.

Located less than three kilometres from downtown Toronto, Billy Bishop airport continues to win global awards from organizations such as Condé Nast, Skytrax, and Airports Council International for being one of the top airports in both North America and the world, and it enjoys a remarkable customer satisfaction rating of 99%.

Through two award-winning carriers, Porter Airlines and Air Canada, Billy Bishop airport provides direct service to more than 20 destinations, including Porter Airlines' direct, non-stop travel to such U.S. hubs and regional markets as New York, Chicago, Boston, Washington, Burlington, Pittsburgh, Orlando, and Myrtle Beach, and offers connections to an additional 80 U.S. cities through airline partnership agreements. In fact, each year more than 450,000 passengers travel to the U.S. through Billy Bishop airport.

Billy Bishop airport is the ninth-largest airport in Canada and the sixth-largest for departing U.S.-bound passengers. We are, however, the only airport among the top nine that is currently without pre-clearance services. We are excited by the opportunities that pre-clearance at our airport presents and we will continue to work with the federal government to implement the new pre-clearance agreement in a way that will support the goals for the overall program and enable a new pre-clearance site in Canada.

I now have made my case for why pre-clearance should be expanded to include Billy Bishop airport. It is a thriving, highly valuable gateway that facilitates travel and trade.

Now let me take a moment to contextualize why an additional pre-clearance facility in Toronto is beneficial. As noted by the U.S. Department of State, the “bilateral relationship” between Canada and the U.S. “is one of the closest and most extensive in the world.” More than $2 billion in goods and services and approximately 300,000 people a day cross between the two countries. Further, trade between Toronto alone and markets in the U.S. equals more than $86 billion per year.

Toronto is a city of nearly three million people with a total of 5.5 million in the greater metropolitan area. One-quarter of Canada's population lives within 150 kilometres of Toronto and more than 60% of the United States population is within a 90-minute flight of the city. Toronto is the centre of the Canadian financial industry and home to Canada's information technology industry, life sciences sector, film industry, and automotive industry as well as many of Canada's leading academic institutions. Therefore, enabling an additional and convenient link between Toronto and the U.S. via Billy Bishop airport just makes sense.

In my last few minutes, I would like to speak specifically about pre-clearance and offer our perspective on the Agreement on Land, Rail, Marine, and Air Transport Preclearance.

As you know, U.S. pre-clearance started in Canada in 1952 at Toronto's Pearson International Airport. Pre-clearance has developed over the years into a sophisticated program to enhance both trade between the United States and Canada and border security.

From a consumer perspective, one of the key benefits is that once passengers are through the pre-clearance process in Canada, they travel essentially as domestic passengers to the United States. This means they arrive at the domestic gate in the receiving airport and leave the airport as would a domestic U.S. passenger, either to connect with another flight or to start their travel in the United States. This opens up potential new markets in the U.S. for trade and travel as it enables passengers to access cities that are serviced by smaller airports that may not have U.S. Customs and Border Protection facilities. It also provides greater choice for consumers in the airports and rail terminals available to them and will go a long way to making travel quicker and more efficient by providing more choice and access points.

● (1645)

A report released by Toronto Pearson International Airport last week estimated that more than 110 million passengers and over one million tonnes of cargo will flow through southern Ontario airports by the year 2043, compared with 49.1 million passengers and more than 470,000 tonnes of cargo today. That's double. This expected growth in population, economic activity, and air service demand presents a real capacity challenge that southern Ontario must acknowledge and prepare for. Expanding pre-clearance is one way of preparing for this growth and opening up more airports to U.S. travel.

But preparing for growth and opportunity by introducing measures to promote speed, access, and efficiency does not have to come at the price of border security. In fact, it is our understanding that through an expanded pre-clearance agreement, borders will become more secure and enforcement officials will have more resources to keep borders safe and protected.

In meetings that we have participated in on the operational side of pre-clearance, we have come to understand that Canadians will benefit from the fact that should they have difficulty accessing the U. S., for such reasons as inappropriate identification or paperwork, they are still in their home country, subject to the rights and protections of Canadian law.

Pre-clearance avoids tremendous cost and disruption to travellers, airlines, and border security services on both sides of the border by identifying admission concerns early in the process. At the isolated extreme, pre-clearance in Canada also identifies and manages any security threat before borders are crossed. Threats to national security can be identified before the threat boards a plane for foreign destinations, giving Canadian border officials more control and resources to work with to identify risk and keep Canadians safe.

Billy Bishop airport and Porter Airlines have been working with U.S. Customs and Border Protection, or CBP, and teams at Transport Canada, Public Safety, and Foreign Affairs to establish U.S. pre-clearance at the airport, with the goal of becoming the first facility to open under the new bilateral pre-clearance agreement.

We understand that Canada and the United States have work to do to implement the new agreement. We are prepared, and have committed to operate the pre-clearance facility under any and all reasonable requirements established by the U.S. and Canada. We also understand that the new model for funding U.S. CBP operations in Canada will be different for us than for other existing facilities in Canada, including the new model for paying for U.S. CBP personnel, which will present a new expense to the airport and its passengers. We are committed to ensuring that our pre-clearance facility is a tremendous benefit that is cost-effective and enables travel and its benefits between our two countries.

Of note is that Billy Bishop airport has started construction on a pre-clearance facility as part of a larger terminal upgrade to bring improved amenities and more space to the facility. There are currently eight airports in Canada operating very successful U.S. pre-clearance facilities in Canada. Our airport is ready and able to move forward with a facility in short order. It is our vision that Billy Bishop airport can become a convenient and valuable connection point between downtown Toronto and regional and hub markets in the United States. An expanded pre-clearance program holds the potential to encourage bilateral trade, facilitate convenient travel for business and leisure passengers, and reinforce national security.

I thank you for your time today and appreciate the attention this committee is giving to the legislation and the topic of U.S. pre-clearance. We look forward to continuing our support of Canadian officials' discussions related to implementing a U.S. customs pre-clearance facility at Billy Bishop airport, and realizing the important bilateral opportunities that exist in the areas of cost efficiency, customer service, trade relations, and security.

Thank you very much.

● (1650)

The Chair: Thank you.

Do you have anything to add, Mr. Cabral? Okay.

Even if you have a flight to catch, we know you'll be able to do it easily.

Voices: Oh, oh!

The Chair: Next up we have Mr. Peerbhoy and Ms. Jafari.

Mr. Mueed Peerbhoy (Chair, Legal Advocacy Committee, Canadian Muslim Lawyers Association): Thank you.

Good afternoon to the committee. Let me introduce my colleague, Pantea Jafari, a fellow board member of the Canadian Muslim Lawyers Association . My name is Mueed Peerbhoy. We'd like to thank the committee for inviting us to speak to Bill C-23 today.

The Canadian Muslim Lawyers Association has been active in the discourse on national security laws and policies in Canada. We have made submissions to and testified before several parliamentary committees examining national security, human rights, and civil liberties on numerous occasions since 2001. We are pleased to make a contribution to the study of Bill C-23 and to national security laws and policies more generally, because these are matters that are important to all Canadians.

Our core values are the values held by the Charter of Rights and Freedoms. The second piece is the rule of law in Canada and holding our elected officials accountable for the necessity and efficiency of the legislation they propose and implement. The third piece we seek to uphold is the dignity of all persons in Canada and the promotion of human rights. We will speak when Canadian Muslims and Muslims in Canada are adversely affected by proposed legislation, but that is not our only focus. We speak to the dignity of all persons in Canada.

I will now turn it over to my colleague, who will speak to the substantive provisions of Bill C-23.

Ms. Pantea Jafari (Board Member, Canadian Muslim Lawyers Association): Thank you very much.

My name is Pantea Jafari. I'm a board member of the Canadian Muslim Lawyers Association. I'm very pleased to be here today. Thank you for having us.

As my colleague suggested, we represent not only Canadian Muslims, of course, but also a wide umbrella of people who are increasingly caught by measures to detect terrorism and control security at the borders. It's practising and non-practising Muslims alike. It's all sorts of racialized and vulnerable populations who seem to fall under that umbrella and disproportionately bear the brunt of these sorts of legislation in terms of increased targeting and enforcement at the borders.

With that lens in mind, we're very concerned about the proposed amendments, given the present authorities that are enclosed in the pre-clearance legislation.

We have two overarching concerns with the bill.

One is that it's basically being posed as of great benefit to Canadians, as we would have the protection of the Charter of Rights and Freedoms in our efforts to cross borders into the U.S., and the conduct of U.S. border officials would be curtailed by the application and protections afforded by the charter.

The concern becomes that the remedies and mechanisms for holding the border officials accountable for those charter protections are missing from the act. The Canadian Civil Liberties Association has spoken about these at length. The fact that there are explicit civil immunities against officers in the bill, the fact that the State Immunity Act applies—which essentially means that even the U.S. government is immune, save and except for when there's a death, bodily injury, or damage to property—and the fact that there's an explicit provision that U.S. border officials will not be crown agents means that recourse to Canadian courts and Canadian law is also barred.

In effect, while the protection framework is there—the bill does say that charter rights and Canadian human rights all apply—the mechanisms to give meat to this claim are not present in the bill and are explicitly excluded.

The second major concern is that the fact that the Charter of Rights exists in Canada requires that any act proposed be minimally intrusive of the rights that the Canadian charter protects. In our research on this bill, in the testimony before you last week and the week before, and in the House of Commons we haven't heard a justification for the vastly increased and expansive investigative and search powers afforded under the bill.

While the minister testified at the opening of this committee's consideration of this bill that U.S. counterparts were very comfortable and very pleased with what's happening with the Canadian pre-clearance areas.... Mr. Picard, you even mentioned that when you visited the U.S., your counterparts were also very pleased, that security wasn't really something they were considering foremost for this bill, and that it was more the increased flow of travel for business and for pleasure.

When you come at the bill with that lens in mind, without an explicit justification for these expansive powers and when the U.S. is stating that they're presently pleased with the way in which the pre-clearance areas are operating, there is cause for concern about why these additional powers are being granted.

With respect to the extensive powers that are granted, Mr. Greene covered the withdrawal provisions at length, so I won't go into those. The one thing I want to add to that consideration is this. The present legislation explicitly protects a traveller wanting to withdraw from a pre-clearance area; the act of withdrawal in and of itself can't be deemed reasonable grounds to suspect that an offence under an act of Parliament has been committed. That explicit protection is removed in the bill. It's not to say that the act of withdrawal in and of itself is going to cause that, but the fact that the protection isn't there is extremely concerning.

● (1655)

As Mr. Greene mentioned, it leaves open the situation in which the bill proposes two criminal charges that could be laid against an individual traveller. One is the charge of false or deceptive statements. It's a summary conviction offence under the act but that has the potential to lead to criminal inadmissibility under immigration laws. That means that a foreign national, if charged on two separate occasions with having provided false or deceptive statements, can be deemed inadmissible to Canada and not only lose their status presently but also be barred from coming back to Canada for a period of time.

The second concern is that the law entails the charge of resisting or obstructing a border officer. This is an indictable offence although it is listed under the bill as a dual or hybrid offence, which could be charged summarily or by indictment. Under Canadian immigration law, it means that will be deemed an indictable offence. The charge itself and a conviction under it could leave permanent residents and foreign nationals possibly vulnerable to being deemed inadmissible on serious criminality.

These expansive powers are given to border services officials, and we're in a context where, post-9/11, there have been 15 years of pent-up frustration of racialized and vulnerable populations at the borders —or even local policing for that matter as we see through Black Lives Matter movements and things like that. When these populations are coming to the borders and to the pre-clearance areas with potential for criminal charges that could lead to the stripping of their immigration statuses, that becomes a huge cause for concern where there aren't any parameters for safety checks and oversight into the act and into the process and procedures for the pre-clearance legislation.

Those individuals who come to the borders now are going to have to subject themselves to increased scrutiny, investigation, and increased search powers. Again, the Canadian Civil Liberties Association addressed this in detail, which I won't take our time to address. When that happens, they have to subject themselves to what they deem to be very unreasonable, frustrating circumstances in order to gain the benefit of the act, which is to allow for increased business and leisure travel. This means having the benefit of easily attending conferences and things like that across the border, especially when employers may be requiring that of a traveller. They either have to subject themselves to that or risk criminal sanctions. Even the act of withdrawal, in and of itself, could lead to those same or similar types of questioning.

It becomes a huge concern for our organization specifically that there are first-hand accounts of these lived experiences at the border. I, as an immigration practitioner, get these experiences second-hand from both our clients and our community members.

If under present laws, people are routinely being questioned for five to six hours on end about their intentions, which then leads to their religious beliefs, their opinions on the current president, or things like that.... When you get to a situation in which an officer actually suspects the commission of an offence, whether it's providing a false statement or something more serious than that, there isn't a curtailment of the investigative powers of that officer. There is a provision that they can question the traveller or collect information from the traveller point-blank.

There is no restriction that it be limited to the offence that they think the person has committed or may have committed. It's just a blanket right to question the traveller and to collect information on the traveller. That information is then allowed to be retained as well due to some other changes.

● (1700)

The Chair: I'll have to ask you to begin to wind up.

Ms. Pantea Jafari: Sure. Thank you.

The Canadian Muslim Lawyers Association has drafted written submissions that outline in detail the many parameters of this bill that are concerning to us. I've highlighted some of the salient ones in our testimony today. It will be provided for translation and will be coming after the fact. I hope to address any questions that you might have stemming from the oral or written submissions.

Thank you very much.

The Chair: Thank you very much.

We go now to Monsieur Fortin.

[*Translation*]

Thank you for being here and welcome.

Mr. Jean-Pierre Fortin (National President, Customs and Immigration Union): Thank you, Mr. Chair.

[*English*]

I will go because I have been told that we're going to try to keep this as short as possible. I'm going to try to do this expeditiously so that we can entertain questions.

The Chair: You have 10 minutes.

Mr. Jean-Pierre Fortin: Thank you very much.

My name is Jean-Pierre Fortin. I'm the national president of the Customs and Immigration Union. I represent over 10,000 members across the country who are mainly front-line officers in different Canadian airports and all of those working at land borders also.

We have about six places where we would like to raise concerns with regard to the Bill C-23 legislation. Part 1 of Bill C-23 authorizes a federal minister designated by the Governor in Council to designate pre-clearance areas and pre-clearance parameters in Canada in which pre-clearance may take place. Part 1 also recognizes the authority of a U.S. designated officer to perform pre-border clearance activities and stipulates that Canadian law, including the Charter of Rights and Freedoms, applies to their activities in Canada.

Part 2 confirms that reciprocal authority and responsibility will apply to CBSA officers performing border pre-clearance in the U.S. The bill also references the possibility of other public officers as designated by the U.S. The CIU is unclear as to what is intended by this and how, if at all, such designations will be made, on what grounds they will be made, and with what authorization or restrictions. It would be helpful if this were clarified.

Secondly, on provision of assistance to U.S. officers, part 1 also authorizes CBSA officers to assist U.S. officers in the performance of duties in Canada, but clauses 35 and 36 appear to create distinctions between police and border services officers' authority, as referenced in subsection 163.4(1), the authorization under the Customs Act regarding Criminal Code enforcement. This needs to be clarified, and there should be an extension of the designation of those officers by CBSA.

Issues have been raised regarding the actual requirements of U.S. pre-clearance officers to notify and involve a CBSA officer should they wish to conduct a strip search of a person travelling into the U. S. While that requirement is expressly articulated in subclause 22(2) of the bill, subclause 22(4) authorizes the U.S. officer to conduct a search if no CBSA officers are available or if the CBSA officer declines to do so. The CIU believes that this provision should be removed from the bill, especially as Bill C-23 expressly notes that Canadian laws apply to all actions taking place in the pre-clearance area, and that other U.S. authorities do not.

On clauses 9, 10, and 11, should a strip search be required in the pre-clearance area in Canada, it should be under the authority of Canadian officers exclusively. Clarification should be obtained from the minister, including whether the government will secure memorandums of understanding with U.S. authorities on this issue. This could be expressly required if they were included as preconditions in the original designation of a pre-clearance area by the minister, clauses 6 to 8, and by the Governor in Council regulations that are authorized under clause 57.

Third, on a traveller's ability to withdraw, clause 29 of the bill expressly articulates the right for a passenger to withdraw from the pre-clearance process. Subclause 20(2) of the bill also prohibits the collection of biometric information from a traveller unless clear notice of the right to withdraw is posted in the pre-clearance area.

Even when a traveller chooses to withdraw, pre-clearance officers still have extensive authority pursuant to clauses 30 to 32, including conducting a strip search on defined grounds. The bill requires, in subclause 32(2), notified participation of CBSA officers in clause 22, but with the same exception as noted above in subclause 22(4).

● (1705)

Accordingly, it is also recommended that the minister secure a memorandum of understanding with U.S. authorities on the circumstances in which CBSA approval and participation is required.

Fourth, regarding preventing double jeopardy of officers, part 2 of the bill grants the Attorney General of Canada exclusive authority to commence and conduct a prosecution of a Canadian officer with respect to an act or omission committed in the United States. This is an important provision, which was recommended by the CIU to ensure that there was no potential double jeopardy, for CBSA officers in Canada would retain ultimate jurisdiction.

Fifth, regarding airport application and CBSA officer status, clause 36 of the bill confirms that officers designated by CBSA under section 163.4 of the Customs Act have the “arrest without warrant” authority under sections 495 up to 497 of the Criminal Code. Given the potential increased involvement of CBSA officers in such situations, this should result in designation for all CBSA officers working at international airports, as there is an increased potential that they will be called upon to act.

Further, this bill supports a long overdue overall approval of arming CBSA officers at international airports, especially if they are working in an enforcement scenario with U.S. officers or armed Canadian police officers. Recent events at airports around the world confirm that times have changed and that the fully trained and armed CBSA officers now working at international airports with their sidearms locked in a cupboard should be allowed to carry their sidearm for the protection of themselves and the public they serve.

Further, there is an insufficient number of police officers in most of the airports in Canada. This can be corrected by the minister's helping CBSA achieve the requirement exemption from Transport Canada, as was reflectedly done for other departments' enforcement officers. For example, the wildlife officers have that exemption.

Border pre-clearance at international airports and elsewhere may be a good idea for both countries. However, before CIU can endorse the provisions of this bill, it will be important that the details be worked out to appropriately protect the privacy rights of the people it is designed to benefit.

Again, thank you for allowing me to appear in front of the committee.

One last thing that I forgot is the sixth, concerning immigration and refugee issues.

Part 2 authorizes the Governor in Council to make regulations adapting, restricting, or excluding the application of provisions of the Immigration and Refugee Protection Act and other Canadian legislation in “preclearance areas” and “preclearance perimeters”.

In addition to this, Canadian officers performing border pre-clearance in the U.S. apply Canadian laws, but subclause 48(1) expressly confirms that a traveller in the border pre-clearance area is not in Canada for the purpose of IRPA and that a refugee claim under section 99 of that act cannot be made.

Again, thank you for allowing me to be here.

● (1710)

The Chair: Thank you for your time and your effort, and also for your work with your union.

Ms. Bell.

[*Translation*]

Ms. Charlotte Bell (President and Chief Executive Officer, Tourism Industry Association of Canada): Mr. Chair, honourable members, I am very pleased to appear before you on behalf of the Tourism Industry Association of Canada, the TIAC, in connection with your study of Bill C-23.

[*English*]

Chairman Oliphant and dear members, on behalf of the Tourism Industry Association of Canada, thank you for the opportunity to share our views on Bill C-23.

For the record, my name is Charlotte Bell, and I'm the president and CEO of the Tourism Industry Association of Canada.

For those who are unfamiliar with us, TIAC is the only national voice representing the interests of all sectors of the tourism industry in Canada. This includes accommodations, transportation, destinations, and attractions. Our members range in size from small businesses to some of Canada's largest hotel chains, national airlines, rail services, and iconic tourist attractions from coast to coast to coast.

Tourism is the top economic driver for Canada, which last year generated $91.6 billion in revenues, surpassing forestry, agriculture, and fisheries combined. It also employs in excess of 627,000 Canadians and is considered a top employer for Canadian youth. With almost 80% of Canadian tourism being domestic, our efforts are focused primarily on international growth and competitiveness. Quite simply, we aim to strengthen the Canadian tourism sector by increasing the number of international visitors to Canada. In fact, in 2016, Canada welcomed just shy of 20 million international visitors, generating $20 billion in revenue, and 2017 is also showing early signs of continued growth from all key international markets, including the U.S., which represents roughly 70% of international visits to Canada.

Tourism is one of the world's fastest-growing sectors, including here in Canada, and it is expected to grow at a steady pace in the coming years. But we need to be ready for it. Canada's success is in large part attributed to its brand. In 2017, Canada's brand is at an all-time high with *Lonely Planet*, *The New York Times*, and *National Geographic* touting Canada as “the place” to visit this year, and we couldn't be more proud.

As Canada welcomes more visitors, and as more people transit through our country by whatever means, whether for leisure, business, or study, we need to ensure that their experiences will be memorable. When I say memorable, I don't mean, “I got lost hiking” or “I spent three hours in line at border security and missed my connection.”

We know one thing about travellers: they love to share their stories with friends and family and through social media, whether good or bad. We hope that when they share their stories about their time in Canada, whether they spent two weeks travelling through the country or they were transiting through one of our airports or harbours, they'll be talking about their great experience and encouraging others to visit.

Travel is a journey that doesn't begin just when you check in to your hotel. It actually starts the moment you leave home, and it continues until you return. For millions of travellers each year, that journey includes clearing border security. Against the backdrop of an increasingly competitive landscape, Canada must keep pace with the growth of traffic in our airports, as well as at our land and marine crossings. By facilitating efficient border security in more markets and locations across the country, we can ensure the unencumbered flow of people and products across our borders, all, of course, while preserving the integrity of our national security. This is something, we believe, that has been achieved through pre-clearance in the past and that will be enhanced by modernizing existing legislation and expanding services to other markets.

Pre-clearance operations between Canada and the U.S.—

● (1715)

The Chair: I'm sorry, Ms. Bell, but I need to interrupt for a minute to confirm that I have unanimous consent to continue the meeting while the bells are on. My proposal will be that we go for about 15 minutes of the 30-minute bell, which should allow us to get about four minutes from each party, and one question.

Ms. Dianne L. Watts (South Surrey—White Rock, CPC): I don't think that's going to be enough time for us to get up to....

Mr. René Arseneault (Madawaska—Restigouche, Lib.): I suggest 10 minutes.

The Chair: How many minutes can we go?

Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC): Mr. Chair, I think personally we should just hear all of the witnesses, make sure they've given their presentations, and call it at that.

Ms. Charlotte Bell: I have one minute left, just so you know, if that helps.

Pre-clearance operations between Canada and the U.S. have been in place as far back as the 1950s and are available in eight Canadian airports, which now pre-clear millions of passengers each year. The new act will extend benefits to other airports, as well as to luxury rail service—Rocky Mountaineer, for example, or Greater Victoria Harbour—to enter into agreements with U.S. Customs and Border Protection to offer pre-clearance to their passengers.

TIAC has long supported pre-clearance as an effective means of facilitating the flow of people and goods across the border. As tourism continues to grow, so does the need to efficiently facilitate the processing of passengers travelling to the U.S., whether they originate in Canada or they arrive from other countries. The tourism industry is anxious to move forward with this new legislation as we hope to see pre-clearance expanded into other parts of the country for the benefit of passengers, national security, and the tourism industry as a whole.

[*Translation*]

Thank you once again.

[*English*]

Thank you, Mr. Chairman.

The Chair: Thank you.

We have 28 minutes. Would you like to end now, or would you like to go for a few minutes with one question each?

Hon. Tony Clement (Parry Sound—Muskoka, CPC): We'd like one question each.

The Chair: Let's take two to three minutes each.

We'll have Ms. Damoff, Mr. Clement, and Monsieur Dubé.

Ms. Pam Damoff: Thank you all. I'm glad I got a chance to ask a question.

Unfortunately, the Canadian Bar Association has left.

I flew down to New York in March with Porter. We left Toronto Island, no problem. I got in the airplane and away we went. We landed in Newark and were easily over an hour going through customs because we were landing with not just Canadians but people from all over the world.

I was watching the U.S. border agents going through the passports. We had no problem. We flew right through, but the people in front of us were from the Philippines and were 15 minutes as they went through every single page on the passport.

If Billy Bishop had pre-clearance, I would be going through customs here in Canada with the protection of Canadian law as would everyone else going through. I really appreciate the concerns people have expressed with the way the legislation is written, but recognizing it was negotiated by a previous government and it's been passed in the States, we have limited ability to change it.

My concern is that I would rather go through that pre-clearance here in Canada with those protections than have to go down to the United States as I did when I flew—it was a great flight—being in the U.S. and not having the protections of Canadian law.

I know what your answer is. You would like to see us go ahead with it. Can you speak to that a little? I'm not trying to belittle any of the comments you have made in any way.

● (1720)

The Chair: You have about 20 seconds.

Ms. Pam Damoff: Okay. Away you go.

Ms. Pantea Jafari: I'll address that in possibly less than 20 seconds. No one's against pre-clearance and its expansion. It's great on all fronts. It's going to help with business travel and tourism. The only requirement is to do it within the confines of the law and the charter and the protections we afford.

While we say we want to do it on Canadian soil so that we have the protection of the charter, in reality we do not seem to have mechanisms for enforcing the charter protections in the event that border officers aren't abiding by them. If there is discriminatory targeting of certain populations or things like that, the very mechanisms to breathe life into those charter protections are not present in the bill, as multiple witnesses have testified, including the Canadian Civil Liberties Association. We don't see those protections and those mechanisms as a vehicle in the bill at all.

The Chair: Thank you. If you would like to add some written work on that question to your brief, it would be helpful.

Ms. Pantea Jafari: We will. Absolutely.

The Chair: Mr. Clement, you're next.

Hon. Tony Clement: I want to follow up on Pam's comment because that's the gist of the issue for me. We keep hearing from the minister and others not to worry: "We have charter rights. This is Canadian territory." Then we hear your concerns and those of the CBA that it doesn't work that way because, as you just put it, it's one thing to have the charter right, but it's another thing to have that charter right applied or to have a remedy.

What do we have to do in this legislation to fix that problem?

Ms. Pantea Jafari: What would need to happen is for some of those immunities to be stripped. The bill includes an explicit provision that civil immunity is granted to border officers. There's no civil remedy. You can't go to the courts for the border officers. It also explicitly states that the State Immunity Act applies. Under the State Immunity Act, again, the border officers themselves are immune, and the U.S. government as a whole enjoys immunity except for where there is death, bodily harm, or damage to property. There's an explicit statement that the border officers will not be crown agents, therefore barring access to the federal courts as well, as an agent of the crown. The three avenues in which you most often seek recourse to the courts are explicitly barred.

I understand the first time the minister appeared you suggested that he or his aides might come back for a second hour of questioning. I would invite you to pose that question to the minister, "Where are the mechanisms that allow us to enforce those charter protections?", or to ask the question, "How are the enforcements going to be measured against the charter and its applications and other Canadian human rights legislation?"

We have scrubbed down the present bill and the Preclearance Act as a lawyers' organization, and so has the CBA and so has the Canadian Civil Liberties Association. As organizations we find this deficient in the bill. We don't see a mechanism for its enforcement, for its use.

Mr. Mueed Peerbhoy: Removing immunity might be an issue, as a practical matter, with the U.S. government. Three things we could do are, first, to return to the current state of the Preclearance Act, which allows people to withdraw without giving reasons; second, not allow U.S. agents to conduct strip searches, and third, if there is a violation of Canadian law, have the CBSA come in and take over. The U.S. agents don't need to continue.

The Chair: Thank you.

Mr. Dubé.

Mr. Matthew Dubé (Beloeil—Chambly, NDP): I have one last quick question on the suspicion of committing offences that we talked about. Given the standards of what is suspicious for Canadian border officers versus for Americans, would you say that causes a risk of seeing profiling and things like that?

Ms. Pantea Jafari: I'll take that.

Absolutely, it's a major concern of our organization, especially when you see that the explicit protection.... The act of withdrawal is not going to be exempted from, in and of itself, being deemed a reasonable ground to suspect the commission of an offence. With the removal of that protection, as well as the realities that we are experiencing at the border presently without these expansive rights of investigation and search, we're very concerned that they're going to be applied most palpably against racialized and vulnerable populations.

● (1725)

The Chair: You have one minute.

Mr. Matthew Dubé: Thank you. I'm good.

The Chair: I think we're good. We have 21 minutes—lots of time to get back.

The meeting is adjourned.